

**Teamsters Local 331 a/w International Brotherhood of Teamsters, AFL-CIO (Statewide) and Leo Sullivan.** Case 4-CB-6890

September 29, 1994

**DECISION AND ORDER**

BY MEMBERS DEVANEY, BROWNING, AND COHEN

On April 11, 1994, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.<sup>3</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Teamsters Local 331 a/w

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In adopting the judge's finding that the Respondent violated Sec. 8(b)(1)(A) and (2) by causing the Company to terminate Charging Party Leo Sullivan because he was not a current member of the Respondent, we also rely on *Quality Mechanical*, 307 NLRB 64 (1992). As noted in that case, "a union may be held accountable for results triggered by what on the surface appears an innocent act which the union well knew would produce a desired result." *Id.* at 66.

<sup>3</sup> The judge's remedy provides that the Respondent must make Sullivan whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of his termination until 5 days after notification to the Company that it has no objection to the Company's employing Sullivan. The Board has held that in cases where a union unlawfully causes an employer to discharge an employee, and there is no culpability on the part of the employer, the union will be required to make the employee whole for all losses of wages and benefits suffered by the employee as a result of the union's discrimination against the employee until the employee is either reinstated by the employer to his or her former or substantially equivalent position or until the employee obtains substantially equivalent employment elsewhere. See *Sheet Metal Workers Local 355 (Zinsco Electrical)*, 254 NLRB 773 (1981), enfd. in relevant part 716 F.2d 1249 (9th Cir. 1983); *Electrical Workers IBEW Local 99 (Electrical Maintenance)*, 312 NLRB 613 (1993). We therefore modify the remedy in this case to conform with *Zinsco*.

Because the recommended Order incorporates the remedy by reference and does not specifically mention the 5-day notification provision, it is unnecessary to modify the recommended Order.

International Brotherhood of Teamsters, AFL-CIO, Pleasantville, New Jersey, its officers, agents, and representatives, shall take the action set forth in the Order.

*Margarita Navarro-Rivera, Esq.*, for the General Counsel.  
*Walt De Treux, Esq.*, of Philadelphia, Pennsylvania, for the Union.

**DECISION**

**STATEMENT OF THE CASE**

MARION C. LADWIG, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on February 8, 1994. The charge was filed by Leo Sullivan, an individual, against the Union on April 16, 1993<sup>1</sup> (amended June 3), and the complaint was issued June 8.

On March 9, when the Union signed a collective-bargaining agreement with Statewide Co., the owner orally promised that four of the employees would join the Union and that the Company would hire two additional employees through the union hall.

Later that month the Company recalled Sullivan, a laid-off employee who was a member of the Union, but on withdrawal. After being sent home with other employees because of rain on April 1 (his first day at work), Sullivan went to the union hall and informed Vice President Druly Golden that he was going to work for Statewide. Golden telephoned the company owner, inquired whether the owner was going to abide by his promise, and mentioned Sullivan's being hired. That evening when Sullivan called the Company to find out when to report to work the next day, he was denied employment.

The primary issue is whether the Union, the Respondent, attempted to cause and caused the Company to terminate Sullivan because he was not a current member of the Union, violating Section 8(b)(1)(A) and (2) of the National Labor Relations Act.

On the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Union, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Statewide Co., a corporation, is engaged in the construction business at its facility in Hammonton, New Jersey, where it annually receives goods valued over \$50,000 directly from outside the State. The Union, Teamsters Local 331, admits and I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> All dates are in 1993 unless otherwise indicated.

<sup>2</sup> The unopposed motion to correct the transcript in the General Counsel's brief (fn. 3), dated March 14, 1994, is granted.

## II. ALLEGED UNFAIR LABOR PRACTICES

## A. Background

For 5-1/2 years Sullivan, who lived in New Jersey, was a member of the Union, a New Jersey local of the Teamsters. Being unable to find other employment after losing his New Jersey job, he took a withdrawal from the Union and joined a Teamsters local in Philadelphia, where he obtained part-time employment. (Tr. 9, 12, 14, 16.)

Sullivan continued to seek employment in New Jersey, applying on his own "all over the place." In December 1992 he finally found part-time employment at Statewide (then a nonunion employer) by following George Smith Jr. (the owner's son) to jobsites and "bugging him" for a job. When Statewide shut down in January because of the weather, Sullivan worked part-time in Philadelphia out of the Teamsters local there. (Tr. 6-7, 9, 15-16, 34.)

Meanwhile on March 9 the Union signed a collective-bargaining agreement (without an exclusive hiring hall provision) with Statewide. Owner George Smith Sr. orally promised that four of the employees would join the Union and that the Company would employ two other employees through the union hall. (R. Exh. 2; G.C. Exh. 2; Tr. 26, 32.)

## B. Sullivan's Recall and Termination

In late March Foreman John Rausch telephoned Sullivan and said for him to come in, that Rausch had a full-time job for him. Sullivan reported for work on April 1. Because of rain, Rausch sent him and the whole crew home and told him to call back when it stopped raining for his hours the next day. (Tr. 7-10; R. Exh. 1 at 1-2.)

That morning (April 1), Sullivan went to the union hall and told Vice President Druly Golden that he was going to work for Statewide, but was rained out that day. Golden admitted telephoning Owner George Smith Sr. later that morning and asking if he was going to live up to his promise to hire employees through the union hall. As Golden further admitted, "At that point I said I had heard he hired a gentleman named Leo Sullivan. And he said to me he [doesn't] even know who Leo Sullivan is" (evidently not being aware that his son had employed Sullivan in December 1992 and that Foreman Rausch had recalled Sullivan from layoff, stating that Rausch had a full-time job for him). (Tr. 28-29, 33; G.C. Exh. 2.)

That evening Sullivan telephoned Rausch to find out what time to report to work the next day, but was denied employment (Tr. 10-11). (I do not rely on the hearsay testimony regarding the content of the conversation.)

The next day (April 2), as Sullivan credibly testified, he went to the union hall and complained to Golden about being laid off. Golden responded that he was "tired of hearing" from every employer "that they want to hire" Sullivan. (As found, Sullivan had been seeking a job on his own "all over the place.") Golden also stated, as Sullivan credibly testified, that "I'm not a member of his union," that "I'm not paying dues to him," that "he has to put his own people in there," that "I'm not one of his own people," and that "I should stay in Philly where I belong." (Tr. 11-13; R. Exh. 1 at 2.)

When called as the Union's defense witness and asked about his next conversation with Sullivan, after talking to Owner Smith, Golden ignored his April 2 conversation with

Sullivan and recounted only a later conversation in which he and Union President Joseph Yeoman talked to Sullivan (Tr. 13-15, 30-31). As indicated, I have credited Sullivan's testimony quoted above regarding Golden's April 2 conversation with Sullivan. Contrary to the Union's challenge to Sullivan's credibility, he impressed me as an honest witness, doing his best to give an accurate account of what happened, despite the confusion in his testimony when recalled to the stand near the end of the trial (Tr. 39-43).

## C. Concluding Findings

Golden denied giving Owner Smith any indication that he wanted Sullivan fired (Tr. 29) and denied informing Smith that Sullivan was not a member of the Union (Tr. 33, 35). When asked his purpose in calling Smith, Golden claimed (Tr. 31):

Well, I assumed that being's they hired Leo [Sullivan], that work was picking up, and he would be calling us for additional people. And I called to see if that was going to happen.

The Union contends in its brief (at 5) that because "no one was hired after Sullivan, it is reasonable to infer that Statewide let Sullivan go because it had no work for him beyond that rained-out day." I do not agree.

I find it obvious from Golden's admissions that when he telephoned Smith on April 1, he was complaining about the Company's hiring Sullivan directly instead of hiring someone through the union hall. As admitted, Golden first asked Smith if he was going to live up to his promise to hire employees through the union hall. Golden then referred to Sullivan's being hired—not hired through the union hall, but hired directly by the Company.

By asking the question about Smith's keeping his promise and referring to Sullivan's being hired outside the union hall, Golden clearly implied that Sullivan (whom the Company had previously hired directly while operating as a nonunion contractor) was not a member of the Union and that Golden wanted Smith to terminate Sullivan and hire someone through the union hall.

Moreover, Golden revealed to Sullivan at the union hall the next day (April 2) that he had the discriminatory purpose of getting Sullivan replaced with a union member by stating, as found, that "he has to put his own people in there" and that Sullivan should stay in Philadelphia where he belonged (as a member of a Teamsters local there).

I therefore find as alleged that the Union, by Vice President Golden, attempted to cause and caused the Company to terminate Sullivan (on April 1, the date Golden telephoned Owner Smith), violating Section 8(b)(1)(A) and (2) of the Act.

## CONCLUSION OF LAW

By attempting to cause and causing the Company to terminate Leo Sullivan on April 1, 1993, because he was not a current member, the Respondent Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having caused Statewide Co. to terminate Leo Sullivan because he was not a current member, it must immediately notify the Company that it has no objection to the Company's employing him and must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of his termination until 5 days after the notification, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). *Food & Commercial Workers Local 454 (Central Soya)*, 245 NLRB 1295, 1299 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

## ORDER

The Respondent, Teamsters Local 331, a/w International Brotherhood of Teamsters, AFL-CIO, Pleasantville, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause or causing Statewide Co. to terminate or otherwise discriminate against any employee for not being a current member of Teamsters Local 331.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Statewide Co. that it has no objection to the Company's employing Leo Sullivan and request the Company to reinstate him.

(b) Make Leo Sullivan whole for any loss of earnings and other benefits suffered as a result of the Company's terminating him, in the manner set forth in the remedy section of the decision.

<sup>3</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Post at its union hall in Pleasantville, New Jersey copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Statewide Co., if willing, at all places where notices to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

## NOTICE TO MEMBERS

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT attempt to cause or cause Statewide Co. to terminate or otherwise discriminate against you for not being a current member of Teamsters Local 331 a/w International Brotherhood of Teamsters, AFL-CIO.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Statewide Co. that we have no objection to the Company's employing Leo Sullivan and *we will* request the Company to reinstate him.

WE WILL make Leo Sullivan whole for any loss of earnings and other benefits resulting from the Company's terminating him, less any net interim earnings, plus interest.

TEAMSTERS LOCAL 331